

**REMARKS****Summary of the Office Action**

In the Office Action, Claims 1 and 2 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

Claims 3-5 stand rejected under 35 U.S.C. § 102(e) as being taught by U.S. Patent No. 6,424,614 to Kawamura et al. (hereinafter "Kawamura").

**Summary of the Response to the Office Action**

Applicants have amended claims 1-5. Applicants have added new claims 6-7 to differently describe embodiments of the instant application. Accordingly, claims 1-7 remain pending for consideration.

**The Rejections under 35 U.S.C. § 112, Second Paragraph**

Claims 1 and 2 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended claim 1 in light of the comments at page 1 of the Office Action in this regard. Accordingly, Applicants respectfully submit that claims 1 and 2 now fully comply with 35 U.S.C. § 112, second paragraph. Withdrawal of the rejections under 35 U.S.C. § 112, second paragraph are thus respectfully requested.

**The Rejections under 35 U.S.C. § 102(e)**

Claim 3-5 are rejected under U.S.C. 102(e) as being anticipated by Kamamura. To the extent that this rejection might be deemed to apply to the claims as newly-amended, it is respectfully traversed as follows. Applicant has amended claim 3 in order to change from independent form to dependent form. Accordingly, the present claim 3 now depends upon newly-amended independent claim 1. Because independent claim 1

was not rejected under 35 U.S.C. § 102(e) in the Office Action, Applicants respectfully submit that dependent claim 3 is now in condition for allowance over the prior art of record. Moreover, the remaining dependent claims 2 and 4-5 are also in condition for allowance in light of their dependence from independent claim 1.

The Examiner's assertion at page 2 of the Office Action that the "farthest or nearest" limitations of claims 4 and 5 "contains non-patentable weight" is respectfully traversed. Claims 4 and 5 specifically recite advantageous features of the "controlling device" of the instant application's disclosure with regard to a specific ordering of how information is recorded onto various recording layers of the recited information recording medium. These features are disclosed in connection with Fig. 6, and at page 18, line 9 – page 20, line 2 of the instant application, for example.

#### **Newly-Added Claims**

Applicants have added new claims 6-7 to differently describe embodiments of the instant application. Applicants respectfully submit that these claims are in condition for allowance at least because of their dependence on claim 2, which is dependent on independent claim 1. Applicants respectfully submit that support for new claims 6 and 7 can be found in the specification of the instant application as originally filed at, for example, page 16, line 26 to page 17, line 14. In particular, Applicants note that claim 6 is supported, for example, by page 16, line 27 to page 17, line 2 and claim 7 is supported, for example, by page 17, lines 12 to 14.

**CONCLUSION**

In view of the foregoing remarks, Applicants respectfully request withdrawal of all outstanding rejections and the timely allowance of this application. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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